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August 21, 2000

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FEDERAL COMMUNICATIONS COMMISSION
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Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.; TW-A325
Washington, DC 20554

Re: CC Docket No. 96-98
CCB/CPD File No. 97-24
TSR Wireless, LLC v. US WEST
Communications, Inc.
File No. E-98-13
Metrocall, Inc. v. Bell South
Telecommunications, Inc., et al.
File Nos. E-98-14-E-98-18

Dear Ms. Roman Salas:

TSR Wireless LLC ("TSR"), by its attorneys, hereby challenges as impermissible and in violation of 47 C.F.R. §1.1208 ex parte communications between Qwest Corporation f/k/a US WEST Communications, Inc.¹ and seven (7) Commission decision-making personnel at two (2) meetings held on July 31, 2000, to which neither TSR nor its attorneys were invited.

Specifically, in notifications filed by Qwest on August 1, 2000, Qwest reported that: (i) a meeting was held on July 31, 2000, between Melissa Newman, Jeffry Brueggeman and Kenneth Cartmell of Qwest and Jim Schlichting and Peter Wolfe of the Wireless Telecommunications Bureau; and (ii) a second meeting was

¹By "Formal Notification Of Change In Defendant's Corporate Identity" ("US West Formal Notification") filed July 27, 2000, US West Communications, Inc. ("US West") advised the Commission that, "[o]n June 30, 2000, US WEST, Inc., the parent and sole shareholder of US WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, Defendant, US WEST Communications, Inc., was renamed Qwest Corporation." Pursuant to the US West Formal Notification, TSR will refer to the challenged entity herein as "Qwest."

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Ms. Magalie Roman Salas
August 21, 2000
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held on July 31, 2000, between Ms. Newman and Messrs. Brueggeman and Cartmell of Qwest and Tamara Preiss, Katherine Parroba, Jessica Rosenworcel, Richard Lerner and Rodney McDonald of the Common Carrier Bureau.² In both cases, Qwest stated that:

The purpose of the meeting was to discuss paging interconnection issues, and Qwest's implementation of the Memorandum Opinion and Order released on June 21, 2000, in the TSR Wireless proceeding noted above. Qwest is working quickly to implement both interim and long term changes to comply with this order, and has notified our existing paging service provider customers as to how we are proceeding.

August 1 Ex Parte Notifications, p.1 (emphasis added).

In *TSR Wireless, LLC v. US WEST Communications, Inc.*, Memorandum Opinion and Order, File Nos. E-98-13, E-98-15 through E-98-18, ___ FCC Rcd ___, FCC 00-194 (released June 21, 2000) ("*Liability Order*"), the Commission resolved the liability phase of the above-referenced formal complaint proceedings initiated by TSR and Metrocall, Inc. by finding that Qwest violated Sections 201(b) and 251(b)(5) of the Communications Act of 1934, as amended (the "Act"), and Commission rules promulgated thereunder, including 47 C.F.R. §51.703(b), by, *inter alia*, improperly imposing charges on TSR "for the delivery of Qwest-originated, intra-MTA traffic to the paging carrier's point of interconnection" and imposing non-cost-based charges solely for the use of numbers.³ Pursuant to 47 C.F.R. §1.722(b) and the *Liability Order*,⁴ TSR is filing simultaneously herewith a Supplemental Complaint ("*Supplemental Complaint*") seeking damages and other relief against Qwest for Qwest's violations as determined in the *Liability Order*.

In the *Liability Order*, the Commission rejected previous TSR challenges to *ex parte* presentations made by Qwest by finding that:

We conclude that [Qwest's] presentations concerning general paging interconnection issues raised in the *Local Competition* [rulemaking] proceeding, as well as the

²Copies of Qwest's two (2) August 1, 2000, *ex parte* notifications are attached hereto as Exhibit 1. These documents will be referred to hereinafter collectively as the "*August 1 Ex Parte Notifications*."

³*Liability Order* at ¶¶1, 18.

⁴*Liability Order* at ¶44.

specific issue of the applicability of reciprocal compensation to paging carriers were permissible. As [Qwest] observes, although the *Public Notice* expands the ability of the parties in the complaint proceedings to address the reciprocal compensation issue by making them subject to permit-but-disclose procedures, the *Public Notice* made no change in the rights of the parties to make presentations on all other issues within the scope of the rulemaking proceeding on a permit-but-disclose basis.

Local Competition Order at ¶39 (footnote omitted).⁵

In the instant case, however, the issue of "Qwest's implementation of the [*Liability Order*] in the TSR Wireless proceeding" that was apparently discussed with Commission decision-making personnel at both July 31 meetings in no way involves either "the applicability of reciprocal compensation to paging carriers" or "other issues within the scope of the rulemaking proceeding" that were found to be subject to permit-but-disclose *ex parte* requirements in the *Liability Order*. Rather, Qwest's *ex parte* presentations to Commission decision-making personnel at the July 31 meetings regarding "Qwest's implementation of the [*Liability Order*] in the TSR Wireless proceeding" addressed exactly the remaining issue in the above-referenced TSR formal complaint proceeding, *i.e.*, the damages and other relief to which TSR is entitled as a result of Qwest's violations of the Act and Commission regulations. TSR respectfully submits that any presentation by Qwest to Commission decision-making personnel regarding how Qwest is allegedly implementing the *Liability Order* with respect to TSR without the presence of TSR and/or its counsel must be considered an *ex parte* presentation in a restricted proceeding that is prohibited by 47 C.F.R. §1.1208. Such presentations by Qwest have nothing whatsoever to do with the broader issues of "the applicability of reciprocal compensation to paging carriers" or "other issues within the scope of the [ongoing *Local Competition*] rulemaking proceeding" that are subject to permit-but-disclose requirements as specified in the *Liability Order*.

Accordingly, TSR hereby requests that:

1. The Commission find that *ex parte* presentations made by Qwest in July 31 meetings with Commission decision-making personnel

⁵The Commission did, however, find that Qwest violated 47 C.F.R. §1.1206 with respect to a May 26, 1999, meeting with Commission staff. *Liability Order* at ¶39.

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August 21, 2000
Page 4

violate 47 C.F.R. §1.1208; and

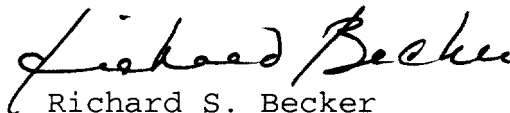
2. The Commission refuse to participate in any further meetings with Qwest representatives that involve the damages phase of the above-referenced formal complaint proceedings and/or the manner in which Qwest is allegedly implementing the *Liability Order* with respect to TSR unless and until counsel for TSR is invited to participate in such meetings.⁶

⁶In this regard, TSR must emphasize that rather than implementing the requirements of the *Liability Order* as alleged by Qwest in the *August 1 Ex Parte Notifications*, Qwest is actually continuing its violations of Commission interconnection regulations. See *Supplemental Complaint*, ¶¶12, 16-17, 23-33.

Ms. Magalie Roman Salas
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Page 5

Should any questions arise with respect to this matter, please
communicate directly with this office.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard Becker".

Richard S. Becker
James S. Finerfrock
Jeffrey E. Rummel
Attorneys for TSR Wireless LLC

Enclosure

cc: See attached Distribution List

Exhibit 1

August 1 Ex Parte Notifications



ORIGINAL

EX PARTE OR LATE FILED

Qwest
1400 Lullwater Street NW, Suite 700
Washington, DC 20004
Phone 202.408.3100
Fax 202.408.4157

Kenneth T. Carstwell
Executive Director-Federal Regulation

ExParte

August 1, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street S.W.
Washington, D.C. 20554

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ORIGINAL COMMUNICATIONS DIVISION
OFFICE OF THE SECRETARY

RE: CC Docket 96-98 /
CCB/CPD File No. 97-24
McGraw-Hill, Inc. v. Bell South Telecommunications Inc., et al.
File No. E-98-14-E-98-18
TSR Wireless LLC v. U.S. West Communications, Inc.
File No. E-98-13

Dear Ms. Salas:

On Monday, July 31, 2000, Melissa Newman, Jeff Brueggeman and I representing Qwest¹, met with Jim Schlichting and Peter Wolfe of the Wireless Telecommunications Bureau. The purpose of the meeting was to discuss paging interconnection issues, and Qwest's implementation of the Memorandum Opinion and Order released on June 21, 2000, in the TSR Wireless proceeding noted above. Qwest is working quickly to implement both interim and long term changes to comply with this order, and has notified our existing paging service provider customers as to how we are proceeding.

Consistent with the Federal Communications Commission's February 11, 1999, Public Notice, which set forth limited "permit-but-disclose" procedures for certain formal paging complaints, including the complaints referenced in the captioned proceedings noted above, we believe that Public Notice could be read to require disclosures of this presentation in those proceedings. Public Notice, 13 FCC Red. 2866 (1998). Therefore, we are filing the notification of this presentation in those proceedings as well. We note, however, that this presentation to the staff of the Wireless Bureau did not in any way address these specific complaint proceedings.

In accordance with Section 1.1206(b)(1) of the Commission's Rules and Regulations, the original and two copies of this letter, are being filed with your office for inclusion in the public record for the above-captioned proceedings. A courtesy copy of this letter will also be sent

¹ On June 30, 2000, U.S. WEST, Inc., the parent and sole administrator of U.S. WEST Communications, Inc., merged with and into Qwest Communications International, Inc. Further, on July 5, 2000, U.S. WEST Communications, Inc. was renamed Qwest Corporation.

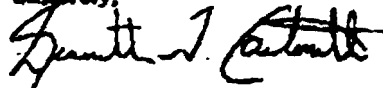
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Ms. Magalie Roman Salas
Federal Communications Commission
Page 2

directly to the distribution. Acknowledgment of the date of receipt of this transmittal is requested. A duplicate of this letter is provided for this purpose.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth T. Carmell", written in a cursive style.

Kenneth T. Carmell

cc: Jim Schlichting
Peter Wolfe

File the letter
Qwest.

ORIGINAL EX PARTE OR LATE FILED

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Kenneth T. Coughlin
Assistant Secretary

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OFFICE OF THE SECRETARY

August 1, 2000

Ex Parte

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: CC Docket 96-98,
CCB/CPD File No. 97-24
Motoroll, Inc. v. Bell South Telecommunications, Inc., et al.,
File No. B-98-14-E-08-18
TSR Wireless LLC v. U.S. West Communications, Inc.,
File No. B-98-13

Dear Mr. Salas:

On Monday, July 31, 2000, Melissa Newman, Jeff Brueggeman, and I representing Qwest, met with Tamara Preisa, Katherine Parrish, Jessica Rosenzweig, Richard Lerner and Rodney McDonald of the Common Carrier Bureau. The purpose of the meeting was to discuss paging interconnection issues, and Qwest's implementation of the Memorandum Opinion and Order released on June 21, 2000, in the TSR Wireless proceeding noted above. Qwest is working quickly to implement both interim and long term changes to comply with this order, and has notified our existing paging service provider customers as to how we are proceeding.

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In accordance with Section 1.1206(b)(1) of the Commission's Rules and Regulations, the original and two copies of this letter, are being filed with your office for inclusion in the public record for the above-captioned proceedings. A courtesy copy of this letter will also be sent

On June 30, 2000, U.S. WEST, Inc., filed a petition for leave to intervene in U.S. WEST Communications, Inc., merged with the Central Communications International, Inc. matter on July 6, 2000, U.S. WEST Communications, Inc., vs. Western Communications, Inc. et al., File No. 00-111.


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Ms. Magalie Roman Sales
Federal Communications Commission
Page 2

directly to the distribution. Acknowledgment of the date of receipt of this transmittal is requested. A duplicate of this letter is provided for this purpose.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth T. Carmel". The signature is fluid and cursive, with the first name "Kenneth" and last name "Carmel" being the most legible parts.

Kenneth T. Carmel

cc. Katherine Parobis
Richard Lerner
Rodney McDonald
Teresa Pries
Jessica Rosenworcel

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